United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

Orig w/affidavit of mailing

76-1034

To be argued by
RAYMOND J. DEARIE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1034

UNITED STATES OF AMERICA,

Appellee,

—v.—

HARRY D. IACONETTI,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLEE

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

RAYMOND J. DEARIE,
Assistant United States Attorney,
of Counsel.

TABLE OF CONTENTS

TABLE OF CASES

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1034

UNITED STATES OF AMERICA,

Appellee,

—v.—

HARRY D. IACONETTI,

Appellant.

BRIEF FOR THE APPELLEE

Preliminary Statement

Harry Dominick Iaconetti appeals from a judgment of conviction entered on January 7, 1976 in the United States District Court for the Eastern District of New York (Weinstein, *J.*), which judgment convicted him of soliciting bribes (Counts One and Four) and receiving a bribe (Count Two) in violation of Title 18, United States Code, Secion 201(c).

Appellant, a Government employee, was originally charged in a five count indictment with bribery and attempted extortion (Counts Three and Five—18 U.S.C. § 1951). A ten day trial before Judge Weinstein and a jury concluded on October 21, 1975 when the jury returned guilty verdicts on all five counts of the indictment. On January 7, 1976, prior to the imposition of sentence, Judge Weinstein dismissed without prejudice the

two extortion counts reasoning that appellant should not be convicted of more than one offense for essentially the same act. (Sentencing Transcript, 11-13). Appellant was then sentenced to concurrent terms of four years imprisonment on each of the three bribery counts. In a Memorandum and Order, dated January 8, 1976, Judge Weinstein denied appellant's motion for a new trial.

On this appeal, appellant challenges the sufficiency of the evidence to support his conviction. He also attacks as error the admission of the Government's brief rebuttal testimony as well as the denial of his pre-trial motion to suppress the transcripts and tapes of two conversations between appellant and Government witness, Michael Lioi.

Finally, appellant now claims that portions of Judge Weinstein's charge to the jury were erroneous.

Statement of Facts

Introduction

The five charges enumerated in the indictment of appellant Iaconetti arise out of two separate incidents involving appellant and his position as a Quality Assurance Specialist for the General Services Administration ("GSA"). In this position, appellant would operate essentially as an inspector in connection with the preparation and administration of contracts between GSA and private contractors to provide goods and services to the Government.

In October 1974, appellant was assigned to supervise a recently awarded contract between GSA and Light-alarms Electronics Corporation of Brooklyn, New York, for the manufacture of emergency lighting equipment for government use throughout the country. During a meet-

ing with Mr. Lou Sonner of Lightalarms, appellant sought one percent of the contract (approximately $3000) to insure that no problems would develop during the life of the contract. Iaconetti repeated his overture several times thereafter, but no payment was ever made. The matter was apparently dropped when Iaconetti was unexpectedly transferred to New Jersey.

The second incident occurred in February 1975 at the offices of Champion Envelope Manufacturing Company ("Champion") in Brooklyn. Appellant was assigned to conduct a pre-award survey of Champion to determine whether Champion was capable of performing a contract on which Champion had successfully bid. Iaconetti again sought one percent of the estimated value of that contract to guarantee that Champion would receive the award. He repeated the offer during a second conversation with the President of Champion which was recorded. Another recorded conversation was secured several days later when Iaconetti appeared at Champion to claim partial payment of $3000 cash. Iaconetti was immediately arrested by the FBI.

The Lightalarms Counts*

In October 1974, Lightalarms was notified that they had been awarded a one year contract for the manufacture of emergency lighting equipment for the Government. This contract required in part that Lightalarms fabricate to Government specifications a certain number of pre-production samples for inspection and testing at a Government lab prior to full scale production under the contract (86). The contract further provided that once

---

* Appellant was charged in Count Four with solicitation of a bribe and in Count Five with attempted extortion under color of official right and by fear of economic loss.

full production began, all inspections would be carried out at the "source", namely, the Lightalarms plant in Brooklyn. These source inspections would be made by the Quality Assurance Specialist assigned to Lightalarms and without his approval, no shipments on the contract could be made (38-40).

Appellant Iaconetti was assigned to generally monitor Lightalarms, performance under the contract and, in particular, to assist in the pre-production phase of the contract and eventually conduct source inspections prior to each shipment. In mid-October 1974, appellant met with Mr. Lou Sonner at the Lightalarms facilities in Brooklyn to review specific provisions of the contract (86). As the two men reviewed the contract, appellant cautioned Sonner that the pre-production sample requirement could create problems for Lightalarms. Appellant also warned that even if the pre-production samples were approved, serious problems could be encountered during source inspections (87). At that point, appellant suggested that Lightalarms could avoid such problems if they did what other contractors were doing. He specifically said that a certain group of contractors were paying him one percent of the contract and thereby avoiding any contractual problems. Appellant assured Sonner that if Lightalarms were to pay the price, they would not suffer any rejections during source inspections (88). When Sonner reacted by stating that one percent was "kind of high", the two men began computing the value of the current contract based on the prior year's sales (88-89). When they finally computed a figure of $3000 as being one percent of the estimated value of the contract, Sonner again responded that the amount was high. Iaconetti explained that he had to split the $3000 with someone else. Sonner inquired if the someone was Mr. Kraft, Iaconetti's immediate supervisor. Iaconetti responded by saying that the "someone" was much higher up than Kraft.

Before the meeting ended, Iaconetti instructed Sonner that the money would have to be paid in advance. Sonner resisted, stating that it would take time to generate cash out of a non-cash business (89). The meeting then ended with Sonner agreeing to discuss the matter with his partners and then contact Iaconetti (90).

In the wake of his meeting with Iaconetti, Sonner was understandably fearful that Lightalarms might now lose the contract. More importantly, in view of Iaconetti's comments about "somebody higher up", Sonner saw all his Government work in jeopardy (91).* He and his partners decided to tell Iaconetti that they would pay the one percent, but they hoped to delay any payment by explaining to Iaconetti that the business could not generate sufficient cash until around Christmas time (93). When Sonner advised Iaconetti of their decision, Iaconetti claimed that he would personally advance half of the one percent ($1500) to the "higher up" to protect the contract (94).

A few days later, Iaconetti returned again to the Lightalarms plant and told Sonner that he was going into the hospital for surgery and needed the $1500 he had advanced on Sonner's behalf to the "higher up". Sonner again told Iaconetti that he did not have the cash. Finally, Iaconetti told Sonner that he would borrow the money for the operation if he could rely on Sonner to pay the one percent. Sonner agreed (95).

Approximately one week later, GSA Supervisor Kraft appeared at Lightalarms and advised Sonner that a new Quality Assurance Specialist was being assigned to Lightalarms. Kraft explained to Sonner that Iaconetti had been reassigned to a plant in New Jersey (107). Sonner

---

* Sonner estimated that approximately 30% of Lightalarms, business was Government related (81).

then told Kraft about Iaconetti's demand for money (97).* Thereafter, Sonner had no contact with Iaconetti and no money was ever paid by Lightalarms to anyone in GSA (93, 97).

The Champion Counts **

In January 1975, Champion Envelope Manufacturing Company ("Champion") submitted a bid to GSA on a proposed six month contract to manufacture envelopes for distribution throughout the United States (136-38). Champion had been doing business for over fifty years and was one of the larger envelope manufacturers with markets located throughout the country (135). During this period Champion engaged in only a small percentage of government contract work, but at the same time had developed a reputation in GSA as a quality manufacturer (41-42, 55, 156-57, 395).

In February, 1975, appellant Iaconetti was assigned to conduct a pre-award survey at Champion to determine whether that company was capable of performing on the proposed 1.2 million dollar contract. During the first week of February, 1975, Iaconetti telephoned Mr. Michael Lioi, President of Champion, to schedule an appointment for the pre-award survey (166). Iaconetti had previously conducted a pre-award survey at Champion and so, initially, the two men exchanged pleasantries.*** Almost

---

* Sonner explained that he did not make an earlier report of Iaconetti's demands because he feared that action by the unidentified "higher up" could jeopardize the present contract and future contracts (96).

** Appellant was charged with solicitation of a bribe in Count One, receipt of a bribe in Count Two and attempted extortion under color of official right and by fear of economic loss in Count Three.

*** That contract involved approximately $50,000.

immediately, however, Iaconetti told Mr. Lioi: "This is a big one, Mike, I'm going to probably take two days. This is going to be a tough one to justify. It certainly is a big one." (167). During the brief conversation, Iaconetti repeatedly expressed his apparent doubts as to Champion's ability to perform under the contract. Lioi countered by assuring Iaconetti that he was confident Champion was capable (167). At the conclusion of the call, the two men scheduled Monday, February 10, 1975 for the commencement of the pre-award survey.

On the morning of February 10th, Iaconetti appeared at Champion's plant in Brooklyn and spoke briefly with Mr. Lioi (168). Iaconetti again expressed his doubts. "Gee, this is really a big one, Mike, this is going to be a tough one to justify." (169). Minutes later the two men were joined by Mr. Zenon Babiuk, Executive Vice President of Champion, who excorted Iaconetti to Babiuk's office to begin work on the survey (169).

Inside Babiuk's office, the two men began to review the contract (141). Iaconetti restated to Mr. Babiuk his concern over the size of the contract. Mr. Babiuk reminded Iaconetti that Champion had never had any difficulty performing on any Government contracts. He assured Iaconetti that Champion could perform on this contract without any question (141).

Messrs. Babiuk and Iaconetti continued their discussion of the terms and conditions of the contract. When they reached that portion of the proposed contract dealing with labeling and packaging of shipments, Iaconetti asked Babiuk if Champion had a Form 123-C which listed the various packaging and labeling specifications for shipments on Government contracts (142). Babiuk showed Iaconetti his form and Iaconetti quickly commented that Champion's form had become outdated. When Babiuk was unable to produce a current Form 123-C, Iaconetti warned

that he could disqualify Champion merely for the failure to have the current form. Mr. Babiuk protested and insisted that he was familiar with the specifications on the form. He invited Iaconetti to examine work then being done at the plant under existing Government contracts to satisfy himself the Champion was obviously aware of the technical requirements outlined in Form 123-C. Iaconetti declined the invitation, again warning Mr. Babiuk—"Any technicality I can disqualify you on." (143-144).*

Finally, Iaconetti told Mr. Babiuk that he did not feel he could justify the entire contract, but that possibly a portion of the proposed contract could be awarded Champion (144). When Babiuk pressed Iaconetti for an explanation as to how the lack of a form could mean the loss of the contract, Iaconetti explained—"In Government, these things are done this way. For any cause, you can be disqualified." (144).

After a lunch break, the two men returned to Mr. Babiuk's office.** Iaconetti immediately asked Babiuk

---

* Several witnesses at trial, including Mr. Iaconetti, agreed that the failure to have the current form would be sufficient basis for disqualification of a contractor. In fact it was generally agreed that it would be the inspector's duty to provide a contractor with the form during the pre-award phase and to insure that the contractor became familiar with the specifications (41, 63-64, 386-88, 479).

** During lunch, the conversation turned away from the proposed contract. Iaconetti explained to Mr. Babiuk that he had been in Government service for approximately twenty-three years, but that he fortunately did not have to rely on his Government salary to make a living. Iaconetti boasted of having been very successful in the stock market and as a result he drove a Cadillac automobile and was considering purchasing a $90,000 home in Dix Hills on Long Island (145-147). In fact, evidence at trial clearly showed that Iaconetti had sustained repeated and significant losses in the stock market (587-590).

how he intended to solve the problem. When Babiuk asked specifically what was the problem, Iaconetti responded by again telling Babiuk that Champion could be disqualified for not having Form 123-C. At this point Mr. Lioi entered the room and, after being apprised of the extent of the problem, suggested Iaconetti join Lioi in his office to discuss the matter further (147-48, 170-73).

Once inside Lioi's office, Iaconetti announced that he saw many problems with the contract. Lioi commented that all other pre-award surveys had been conducted routinely without any problems and that in all cases Champion had been awarded the contract and had performed most satisfactorily. Iaconetti agreed but emphasized that "this is a big one, Mike, and it's going to take a lot of justification." (174). Lioi then assured Iaconetti that Champion could solve any problems, but Iaconetti only mentioned the missing form. The conversation persisted for some time with Iaconetti referring to the "many problems" and Lioi trying to find out what they were (175-76).

Finally, Iaconetti told Lioi that to justify the award of the contract to Champion, Lioi would have to overcome certain "hurdles", certain "upper echelon" people who would have to be convinced (175-76). When Lioi asked what would convince the upper echelon people that Champion was capable of performing under the contract, Iaconetti did not answer. Instead, he told Lioi that he could save Champion approximately one percent of the contract or approximately $12,500 (176). Lioi got the message. The meeting broke with Lioi agreeing to confer with his associates and speak with Iaconetti on the following day (177-78).

Lioi spoke immediately with his business partners, Messrs. Babiuk and Goldman (178). Later that evening,

Lioi telephoned his attorney and on the following morning, February 11th, Lioi telephoned the New York office of the FBI (180). Later that morning, Lioi spoke directly with Special Agent Chandler and reported what had transpired during the previous day.

As a result of his conversation with Agent Chandler, Lioi equipped his office with a voice activated tape recorder in preparation for Iaconetti's return visit that morning (180-81). At approximately 11 A.M., Iaconetti returned to Lioi's office and the two men continued their discussion of the previous day with the added benefit of magnetic tape.* Almost immediately the subject turned to the previous day's discussion.

HI: All right. I'll be able to justify a portion of it, otherwise, instead of all of it.
ML: When you say "otherwise", what do you mean?
HI: Well.
ML: You mean.
HI: Well, instead of justifying all of it.
ML: Yeah.
HI: And not having any trouble.
ML: Right.
HI: Then I can only be able to justify a portion of it and not have any trouble or not too much trouble. Let's put it that way.
ML: Well, how could we justify all of it and not have any trouble?
HI: Uh, going through what I (a telephone ringing) said yesterday (inaudible) to start with. (Appellee's App. p. 2)

---

* The transcripts of the portions of the February 11th and February 24th tapes which were played for the jury are reproduced in appellee's appendix.

During the lengthy conversation, both men proceeded cautiously. Iaconetti reiterated his message of the day before:

> HI: Ah, ah, to get the whole thing, we're going to have to do a lot of justification and to cut some of the ice you have to go that other route that we spoke about. What that means in no uncertain terms is that, uh, it will open up the doors for later on for the large similar type awards and maybe even larger, without too much of a hassle.
> (Appellee's App. p. 3)

After considerable discussion, Iaconetti talked price:

> HI: Allright, allright. What it amounts to in the long run, I said yesterday 1½ percent. Three quarters of it goes to a certain area, a quarter goes to another area and possibly I get a half of a percent. . . .*
> (Appellee's App. p. 12)

Finally, the price was reduced to $9800 with Iaconetti again agreeing to advance payment to the upper echelon. With his agreement apparently sealed, Iaconetti left the Champion plant.**

Several days later arrangements were made for Lioi and Iaconetti to meet for the payment (190). By this

---

* As an added sweetener, Iaconetti agreed to forego his percentage in favor of future contracts. His price computations also included the possibility of increasing the overall value of the contract by $65,000 by disqualifying another bidder on a smaller portion of the contract. (Appellee's App. pp. 12-13)

** Iaconetti's plant facilities report (Gov't Ex. 12), dated February 11, 1975, was thereafter forwarded to GSA headquarters. In pertinent part, Iaconetti concluded that Champion was capable of performing the entire contract and, in fact, could produce double the capacity called for in the contract.

time, the FBI had equipped Lioi with a miniature body recorder and transmitter (191-92).

On the afternoon of February 24, 1975, Lioi met Iaconetti at a diner located near the Champion plant in Brooklyn. Discovering the diner to be closed Lioi got into Iaconetti's government vehicle where the two men discussed alternate plans (191-93). Their words and movements were monitored by the FBI (303-05). Finally after some delay occasioned by an obviously cautious Iaconetti, Iaconetti directed Lioi to place the cash envelope in the trunk of his Government vehicle. As Iaconetti closed the trunk, the FBI moved in for the arrest (207).

The Defense

Appellant Iaconetti took the stand in his own defense. Simply stated, he virtually denied any conversations that were not included on the February 11 and February 24 tapes. For example, he denied asking or suggesting to Lou Sonner that he could avoid contract problems by paying one percent of the contract (462-65). He denied telling Messrs. Lioi and Babiuk that the contract was going to be hard to justify. He denied warning Mr. Babiuk that he could disqualify Champion because of their failure to have Form 123-C. Needless to say, Mr. Iaconetti denied soliciting any money from Mr. Lioi directly or indirectly during his conversation with Mr. Lioi on February 10. He testified that he informed both Mr. Lioi and Mr. Babiuk that the survey was going well and that there were only minor "blemishes" which could easily be corrected. According to Iaconetti, when he told Mr. Lioi about the existence of these minor "blemishes", Lioi offered him $1000 to remove the blemishes. In the wake of these offers, Iaconetti assured Mr. Lioi that the so-called "blemishes" were so insignificant that they would not appear on his plant facility report and that in no

way jeopardized the award of the contract to Champion. Despite these assurances, Mr. Iaconetti testified that Mr. Lioi insisted that he take the $1,000 to remove any possible problems (479-84, 495-97, 505-516).

Mr. Iaconetti's explanation of the recorded conversations of February 11, and February 24, is of course markedly different. Iaconetti claimed that he returned to the Champion plant on Tuesday, February 11, in the hope of dissuading Mr. Lioi from making any payment. When it became apparent to him that Mr. Lioi was intent on offering $1,000, Iaconetti decided to "draw him out" and to gather evidence by pretending a willingness to receive the money (510-516). Iaconetti explained that he had become extremely sensitive to the need for gathering evidence because he himself had been wrongfully accused of demanding money from the principals of Lightalarms Electronics Corporation in October 1974.

Iaconetti admitted, however, that when he was arrested by the FBI he never told the FBI that he had undertaken a one man investigation into the conduct of Michael Lioi. He admitted further that in fact he told no person about the overture of Mr. Lioi or about his decision to gather evidence on his own. Finally, and most significantly, Mr. Iaconetti had to admit that after his arrest he told the FBI that he was known as a practical joker, and that the events of February 11, and February 24, were simply one of his jokes that had gotten out of hand (620-22, 748-53).*

---

* The defense also called Paul Friedman, Director of the Quality Control Division of the General Services Administration who confirmed that he had been given a report of a complaint from Lightalarms against his close personal friend, Iaconetti. He stated, however, that he did not refer the report to the Office of Investigations or any other law enforcement official within or without GSA (810, 820).

ARGUMENT

POINT I

The rebuttal testimony was properly received in evidence.

Appellant claims that the admission of the rebuttal testimony of Messrs. Goldman and Stern was improper and requires a new trial. Before centering on the legal justification for the admission of the brief rebuttal testimony as outlined in Judge Weinstein's Memorandum and Order of January 8, 1976, it would be useful to examine closely the context in which this issue is now before this Court. In urging that the five minute rebuttal testimony of Stern and Goldman was inadmissible hearsay as to Michael Lioi's statements, appellant advances the remarkable contention that this testimony was somehow crucial and devastating. (Appellant's Brief, p. 16). In fact, the testimony of Mr. Goldman and Mr. Stern bordered on the inconsequential. It was obvious to everyone that at some point on or about February 10, 1975, Lioi had reported Iaconetti's approach to the authorities. Lioi was permitted to testify on direct examination that after Iaconetti left the Champion plant on February 10, he immediately met with his partners, Messrs. Babiuk and Goldman. Lioi further testified, without objection, that after calling his attorney, he reported to Special Agent Chandler on the morning of February 11, the events of the previous day. Wholely apart from the rebuttal testimony it was patently obvious to everyone that Lioi had immediately reported Iaconetti's bribe solicitation to the FBI. Certainly any doubt that this occurred is resolved by the appearance of Special Agent Chandler and the arrest of appellant on February 24. It is difficult to perceive, therefore, how the testimony of Messrs. Goldman and Stern can be characterized as crucial to the Government's case or devastating to the defense.

Beyond these practical considerations, the testimony of Messrs. Stern and Goldman was properly received by Judge Weinstein. As related in Judge Weinstein's Memorandum and Order, the testimony was not hearsay under any reasonable interpretation of Rule 801(d)(1)(B) of the Federal Rules of Evidence. Lioi testified at trial and was certainly available for cross-examination on his reports to his business associates, attorney and FBI. The hearsay aspect of the rebuttal testimony was, of course, consistent with Lioi's testimony and was properly received to rebutt the most express charge of the appellant that the testimony of Lioi was fabricated as a result of some unstated motive.

Secondly, the testimony was properly received under Rule 801(d)(2)(C) since it relates to statements of Lioi to Goldman which were in fact made at the suggestion of appellant who realized that any willingness on the part of Champion to pay would require the collective agreement of the contractor's principals.

Further, as Judge Weinstein clearly noted, the testimony was properly received pursuant to Rule 803(24) since it was offered as evidence of a material fact and was most probative particularly in view of the clear conflict between the testimony of the appellant and Michael Lioi regarding the meeting of February 10. Further, because Lioi was available for cross-examination and because the hearsay statements were consistent in all respects with the almost three hours of tape recorded conversations of the appellant, the statements enjoyed such obvious "circumstantial guarantees of trustworthiness" that Judge Weinstein concluded that the rebuttal evidence was properly admitted so "that the truth may be ascertained and proceedings justly determined."

Lastly, the testimony was properly received under Rule 803(3) as bearing on the state of mind of the

victim Lioi at the critical time following the meeting of February 10. In view of the charge of attempted extortion, the state of mind of Lioi is critically in issue and therefore the rebuttal testimony was directly relevant to that significant issue. *United States* v. *Trotta*, 525 F.2d 1096 (2d Cir. 1975); *United States* v. *Annunziato*, 293 F.2d 373 (2d Cir.), *cert. denied*, 368 U.S. 919 (1961).

POINT II

Other Points.

The Government respectfully submits that the remaining arguments posed by appellant may be dealt with briefly.

1. Appellant claims his pretrial motion to suppress the tapes and transcripts was improperly denied. Appellant does not challenge the authenticity or audibility of the tapes or the accuracy of the transcripts. His application is apparently directed at constitutional considerations and is easily disposed of by *United States* v. *White*, 401 U.S. 745 (1971) which authorizes the admissibility of consensual recordings.

2. Appellant next attacks Judge Weinstein's charge to the jury because it included instructions on the attempted extortion charges. Without isolating any portion of the charge, appellant attempts to demonstrate prejudice by pointing out that Judge Weinstein dismissed the extortion counts prior to sentencing appellant.

It must be emphasized that Judge Weinstein did not dismiss the attempted extortion charges because of any insufficiency in the Government's proof. In fact, the Court specifically found that the Government had proven beyond a reasonable doubt all the counts of the indictment

(Sentencing Transcript, 12-13). Judge Weinstein acted because he concluded that he could not convict appellant of more than one offense for essentially the same act. Analogyzing to the sentencing problem confronted under the bank robbery statute, Judge Weinstein noted the marked similarity between the bribery solicitation counts and the charges of attempted extortion under color of official right (Sentencing Transcript 11). See generally *Gorman* v. *United States*, 456 F.2d 1258 (2d Cir. 1972). The Government suggested that concurrent sentences would alleviate any problem, but Judge Weinstein preferred to dismiss the extortion counts without prejudice (Sentencing Transcript, 13-14).

In the wake of this windfall, appellant claims that he was somehow prejudiced by the inclusion of the instructions on the attempted extortion counts. Appellant theorizes that if the extortion counts were not given to the jury, he would have stood a better chance of an acquittal on the bribery charges. This non sequitur flies in the face of the overwhelming evidence of appellant's guilt on both the bribery and attempted extortion charges.

3. Last and appropriately least, appellant challenges the sufficiency of the evidence to support his conviction. In haphazard fashion, appellant simply repeats arguments understandably rejected by the jury. Appellant concludes with the simple statement that "[d]efendant's testimony negates any crime." (Appellant's Brief, p. 23.) The Government respectfully submits that the credible evidence demonstrates appellant's guilt beyond any possible doubt.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

RAYMOND J. DEARIE,
Assistant United States Attorney,
of Counsel.

★ U. S. Government Printing Office 1976— 614—353—202

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

EVELYN COHEN, being duly sworn, says that on the 21st day of April, 1976, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a BRIEF FOR THE APPELLEE of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Leon Dicker, Esq.
400 Madison Avenue
New York, N.Y. 10017

Evelyn Cohen

Sworn to before me this
21st day of April, 1976

Martha Scharf

MARTHA SCHARF
Notary Public, State of New York
No. 24-3480350
Qualified in Kings County
Commission Expires March 30, 1977